

IP 05-0032-CR 1 H/F US v Horne [3]
Judge David F. Hamilton

Signed on 6/14/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
HORNE, DEWAN ANTHONY,)	CAUSE NO. IP05-0032-CR-01-H/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. IP 05-32-CR-1 H/F
)	IP 05-32-CR-2 H/F
DEWAN ANTHONY HORNE)	
and JOSEPH E. RODGERS,)	
)	
Defendants.)	

ENTRY ON MOTION TO CONTINUE TRIAL

The government has moved to continue the trial scheduled for June 20, 2005. By marginal notation, the court has denied the motion this morning and counsel have been notified. A brief explanation is in order.

Defendant Dewan Horne was arrested on approximately January 10, 2005. He has been in federal custody since then. The government first sought an extension of time to secure an indictment, which was granted. A grand jury returned the original indictment on March 2, 2005, which named only Horne. Trial was scheduled for April 25, 2005. This court denied Horne's motion to vacate the order detaining him before trial.

The grand jury returned a superseding indictment on April 20, 2005, which added Joseph E. Rodgers and Desmond Johnson to the case as alleged co-conspirators with Horne. Trial was continued to June 6, 2005, and the court later continued the trial by two weeks, to June 20, 2005.

The shape of the case then changed substantially last week. The government has apparently concluded that it secured an indictment of the wrong person. On June 9, 2005, it dismissed the charges against Johnson and arrested one William Rusununguko, who the government now believes committed the acts attributed to Johnson in the first superseding indictment. The government states that it now intends to seek a new indictment naming Horne, Rodgers, and Rusununguko on June 21, 2005, and proposes that the trial be continued so that it may do so and so that all three could be tried together. The government's motion points out the general preference for joint trials of alleged co-conspirators and the judicial economy that would be served by postponing the trial. The government's motion also points out that several alleged victim-witnesses are from other states and might have to travel twice to Indiana for two trials. Those are substantial reasons supporting a continuance.

In this case, however, there are important countervailing interests. The court has already postponed the trial once, in substantial part because of the government's decision to seek the first superseding indictment. (The other reason was Horne's motion to suppress, which the court granted after the government

agreed that the evidence in question should be suppressed. In other words, Horne bears no responsibility for that delay, however justified it was.) The first superseding indictment apparently misfired, since the government now no longer believes Desmond Johnson committed the criminal acts attributed to him in that document. Most important, Horne has been in custody for a considerable amount of time. He is presumed innocent, and he is entitled to a speedy trial.

The government points out that the Speedy Trial Act would allow a continuance for “a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted. . . .” 18 U.S.C. § 3161(h)(7). In this case, Rusununguko is not yet a co-defendant, but even if he already were, his late addition to the case makes likely a further continuance of at least several months. Horne and his counsel are ready for trial now, and Rodgers and his counsel should be ready for trial. If Rusununguko is indicted, he and his lawyer will have to start from square one. The court does not know what issues might arise before trial in his case, but the result of a continuance to allow a joint trial is that Horne will almost certainly spend several additional months in jail before trial.

If this were the first superseding indictment and the first continuance triggered by the government’s continuing investigation, the government’s motion would have received a warmer response. The second time around, with the original defendant in custody and ready for trial, the interests of justice call for

taking the chance that the case may need to be tried twice. Accordingly, the court has denied the government's motion to continue, and trial of defendants Horne and Rodgers remains scheduled for Monday, June 20, 2005.

Date: _____

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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